

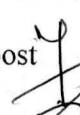
13

OA No. 148 of 2009
M.L.B.Gandhi Applicant
Versus
Union of India & Others Respondents

Order dated: 11th March, 2010.

C O R A M
THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
And
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....
Applicant was a Constable in the Railway Protection Force. On 16.6.2004 he suffered heart attack leading to bypass surgery for which he, becoming unfit to discharge the duties of a Constable, was declared medically decategorized on 6.5.2005. Following his medical decategorization, he was screened, on 4.9.2008, for providing him an alternate employment (in the Railway) and the screening committee recommended him for appointment as Record Sorter/Cook. On 11.11.2008, the opinion of the screening committee was accepted by the competent authority i.e. Sr.DSC vide Annexure-A/4 dated 11.11.2008. Accordingly vide Annexure-A/7 direction was made by the Sr. Divisional Security Commissioner/RPF/ECoRly/Waltair (to the PC/RPF Post/VSKP,E.Co.Railway) to spare the Applicant immediately to join as Cook. His contention is that (while similarly situated employees, after their medical decategorization, have been provided with alternate employment that are connected with official/clerical work) he has been discriminated and that, with his ailment, it would be difficult for him to discharge the duties of a Cook. Accordingly, by filing this Original Application under section 19 of the A.T. Act, 1985 he prayed to quash the order under Annexure-A/4 & A/7 and to direct the Respondents to absorb him against any other Group C post



(Clerical) post commensurate with the pay scale what he was getting before being medically decategorised.

2. Respondents opposed the contentions of the applicant in their counter filed in this case. The substance of the contention of the Respondents, in the counter, is that the Applicant cannot choose what post he would be provided; and that he was provided the post of Cook on the recommendation of the screening committee (as no vacancy of Record Sorter is available in the Department) by protecting his pay in the previous post. Besides, the merit of the matter, the Respondents also took the point of jurisdiction of this Tribunal to entertain this OA.

3. Having heard the rival submissions of the parties and upon perusing the materials placed on records, we do not feel it necessary to deal with the matter in great details and it would suffice to quote the decisions already rendered by this Tribunal on similar issues in the case of K.Satyanarayan v Union of India and others (rendered in OA No. 67 of 2009 that was disposed of 26th June, 2009); the operative portion of which reads as under:

“5. It is an admitted fact that the Applicant was working as Constable before he was declared as medically decategorised. As per the provisions contained in Chapter XIII of the Indian Railway Establishment Manual Vol.I, if an employee is found medically decategorised while working in a particular Group, he will be accommodated in the same Department in the same Group or he may be given further posting in other Department. In the first case it is categorically laid down that if there is no post available in the same department, steps have to be taken to create a supernumerary post to accommodate him. Reading of the above provisions clearly indicates that the Department is duty bound to accommodate such medically decategorised employee in the same Group to work either in the same department or any other Department.....”

This Tribunal also had the occasion to deal on the subject of an employee of Railway in OA No.O.A.No.780 of 2006



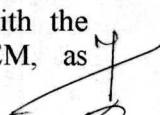
filed by Shri Deepak Dash v union of India and others. By taking into consideration the Rules on the subject, this Tribunal in its order dated June, 2009 held as under:

3. It is the stand of the Applicant that as per the Railway Board's directives after being medically de-categorized, he should have been shifted to an alternative post not only with the same scale of pay but also with same service benefits. Prior to becoming medically de-categorized the applicant was in the scale of Rs.4500-7000/- . Hence as per rules he was correctly placed in the scale of pay of Rs.4500-7000/- . This scale is meant for the post of Sr. Clerk but due to intentional and deliberate wrong mentioning that the applicant is posted as '**CLERK**' he was deprived of being considered for the post of Head Clerk carrying the scale of pay of Rs.5000-8000/- to which scale he would have ordinarily been promoted had he not been declared medically de-categorized in his previous post and his junior i.e. Respondent No.5 was promoted to the said post. In this connection he has relied on the directives of Railway Board which provides as under:

"304(1) A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service and becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post **with same pay scale and service benefits.**"

"1301. A Railway servant who fails in a vision test or otherwise by virtue of disability acquired during service becomes physically incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank but should be shifted to some other post with the same pay scale and service benefits."

"Establishment Srl.No.118/02- The matter has been considered by this Ministry who wish to clarify that absorption of medically de-categorized staff in grade (s) lower than the grade held by them on regular basis at the time of their medical de-categorization is in contravention of the provisions of the Act. However, in cases where for want of posts in the same/equivalent grade such employees are engaged in productive work by deploying them in posts not carrying the same or equivalent scale of pay, while they may work against such posts **they should continue to be kept on supernumerary posts in the grade (s) in which they were working on regular basis at the time of their medical de-categorization, till such time they are adjusted in the posts carrying the same or equivalent scale(s) of pay.** This will be in keeping with the provisions contained in para 1305 of IREM, as



- 4 -

incorporated vide ACS No.77, referred to in the preceding para."

4. The above provisions of the Railway Board have neither been controverted in the counter nor rebutted during the course of hearing of the matter by Learned Counsel appearing for the Respondents. It reveals that the Respondents rejected the case of the Applicant under Annexure-A/18 without noticing or taking into consideration the directives of the Railway Board referred to above and thereby caused miscarriage of justice in the decision making process meriting reconsideration of the case of the Applicant. Further according to the Respondents there was no vacancy in the category of Sr. Clerk in scale of Rs. 4,500-7,000/- (RSRP) in S&T Dept. at the material time and as such the applicant was posted as clerk duly protecting his existing scale of pay Rs.4,500-7,000/- (RSRP) and as the applicant was not a senior clerk at the time of filling up of the post of Head Clerk in scale of Rs.5000-8000/- (RSRP), in the month of January, 05 he was not called upon to face the test. It appears that both the grounds taken by the Respondents are not tenable in the face of the Railway Board's instructions which need thorough examination afresh by the Respondents. It further appears that the issues involved in this case also formed subject matter of consideration earlier in OA No.600/2005 disposed of on 29th August, 2008 (Janardan Panda v Union of India and others), OA No.96/03 disposed of on 15.02.2005 and OA No.187/2002 disposed of on 11.10.2002 and the Tribunal viewed the matters affirmatively.

5. In view of the discussions made above, the order under Annexure-A/18 dated 19.04.2007 is hereby quashed and the Respondents are hereby directed to reconsider the case of the Applicant in the light of the Railway Board's directives quoted above afresh and pass a reasoned order removing the injustice caused to the Applicant within a period of 45 days from the date of receipt of this order. In the result, this OA stands allowed in the aforesaid terms. No costs.

4. In the instant case we find no reason to deviate from the view already taken by this Tribunal in the aforesaid cases. Accordingly, we direct the Respondents to consider the case of the Applicant for providing him a better Group C post (which will not be hazardous for the ailment/suffering by the Applicant) within a period of thirty days from the date of receipt of this order. Till such time, there should be no depletion adversely affecting his interest which he is enjoying now.



17

- 5 -

5. In the result, this OA stands allowed to the extent indicated above. No costs.

~~(C.R.Mohapatra)~~
Member(Admn.)

~~(M.R.Mohanty)~~
Vice-Chairman

~~Y~~
11/03/10